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COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
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COMMISSIONERS

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CHAIR
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JOE CHILDERS

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**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF **SEPTEMBER 11, 2008**: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSRC" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** Chair and Commissioner Denise Moore Davidson and Commissioner Joe F. Childers were present. Also in attendance MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 a.m. EST
- ❑ **Declaration of a Quorum:** Upon the call of the meeting, Commissioner Childers made a motion that a quorum was present, which was seconded as appropriate. The motion carried unanimously, and was so Ordered.
- ❑ **Welcome Guests:** Hon. Mike Haines, Energy and Environment Cabinet General Counsel was present and also staff attorneys for OGC; Lentz, Thompson, Morrison, Geisler, Boyd and Smock who were representing the Office of Mine Safety and Licensing. The Office of General Counsel was assisted by Kari Sutherland, Mary McCoy, Tara New.
- ❑ The **minutes** for the meeting on **08/14/08** were discussed. Commissioner Childers made a motion for approval, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the minutes.

- **OMSL Motions for Sanctions & Permanent Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**
 - 08-MSRC-009 Darin K. Adams and 08-MSRC-041 Jonathan L. Fields, were called in turn. Neither of these respondents appeared or participated and no one on their behalf filed any response. OMSL moved for **permanent revocation** as to each based upon noncompliance with the drug testing or evaluation terms of the Settlement Agreement incorporated as the Final Order of this Commission. This was found to be a violation of the Final Order for each. Commissioner Childers made a motion to **grant** the motions which were seconded by Commissioner Davidson. The motions carried unanimously, and were so Ordered upon the signature of Davidson.
 - 06-MSRC-042 Ralph Hurley and 08-MSRC-043 Greg Potter appeared and requested a **settlement** which was incorporated in an amended settlement agreement and submitted for MSRC approval. Mr. Hurley waived any conflict Commissioner Davidson may have had in hearing his case. Commissioner Childers made a motion to **grant** the motions which were seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
 - 08-MSRC-100 Mart. T. Hall was called and OMSL moved for a **continuance** to November 13. Commissioner Childers made a motion to **grant** the motion which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
- **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**
 - The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 08-MSRC-078 Tommy D. Seals, 08-MSRC-176 Matthew Welford, 08-MSRC-192 Timothy W. Prader, 08-MSRC-193 Brian K. Looney, 08-MSRC-195 Jordan K. Price; an Initial Denial case, 08-MSRC-196 Danny M. Adkins, 08-MSRC-197 John Wayne Robinson, 08-MSRC-198 Leonard D. Pinion, 08-MSRC-207 Christopher Bryant, 08-MSRC-209 Chester Allen Baker, 08-MSRC-210 Jonathan P. Early, 08-MSRC-212 Johnny Younce, and 08-MSRC-216 Joe Lowe, also an Initial Denial case, each in turn. Every one of these Petitioners appeared and tendered a **Settlement Agreement** and Motion to Approve the same. Commissioner Childers requested and received a waiver from the determinations on Prader, Adkins and Younce citing a conflict. Commissioner Childers made a motion to **grant**, each of their settlements which were seconded as appropriate. The

motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.

- The Commission called also the KRS 351.120(12) Petition for Appeal of 08-MSRC-172 Timothy J. Brewer, an Initial Denial case, 08-MSRC-194 Perry Adams, 08-MSRC-208 Douglas M. Gooslin III and 08-MSRC-211 Shane Martin, who were duly notified and scheduled for the hearing *they* requested for this meeting. **None** of them **appeared** and were each Ordered to **Show Cause** as to why their certificates should not be revoked upon order at the next meeting. Commissioner Childers made the motion for Show Cause which was seconded by Commissioner Davidson. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.
- The Commission also considered 08-MSRC-200 Joe B. Smith. Mr. Smith appeared and provided valid prescriptions for the relevant time period and thus OMSL agreed to **reinstate** and Mr. Smith moved to withdraw his Petition. Commissioner Childers made the motion approve Petitioner's withdrawal which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” revocations:

The Commission called and then granted the motions by OMSL for **revocation** in the following procedurally similar cases. No one appeared on behalf of any Respondent miner and no Respondent appeared despite notice by certified mail with a return as to each; 08-MSRC-163 Jeremy K. Raschella, 08-MSRC-185 Durand Warren, 08-MSRC-186 Shannon Cromer, 08-MSRC-203 David D. Griffith, 08-MSRC-204 Christopher P. Short, 08-MSRC-205 Robert D. Sykes and 08-MSRC-213 Danny Dunn. Commissioner Childers made a motion to **grant**, each of the OMSL Motion for Revocations which were seconded by Commissioner Davidson. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.

- The Commission also ruled favorably on the proposed **settlement** tendered in the following OMSL Show Cause hearing for revocation: 08-MSRC-202 Markus D. Richardson, 08-MSRC-214 Shawn M. Muncy and 08-MSRC-215 Clinton R. Clatworthy. Commissioner Childers made a motion to **grant**, the OMSL Motions for settlement which were seconded by Commissioner Davidson. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.

The 11:00 a.m. Docket for Motions to Reconsider:

- The Commission then called 07-MSRC-064 Troy A. Collett. Mr. Collett requested reconsideration alleging the prior determination was in error and avowing he held proof, thus this matter was granted and docketed for this meeting. Mr. Collett appeared and admitted that he did not comply with an Amended Settlement Agreement in regard to submitting drug tests, which was a modification of the original settlement Agreement so modified because he failed to submit tests in violation of that agreement. Mr. Collett provided no reason the Permanent Revocation based upon non-compliance with his second chance in the Amended Settlement Agreement was in error thus the Commission determined that he failed to meet his burden of proof and that the previous Order remains in full force and effect. Commissioner Childers made a motion to **deny**, the Motion for Reconsideration which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.
- Next the Commission called the case of 08-MSRC-165 Mark Pennycuff and was informed that the matter was not yet ripe and should be **continued** to November 13. So informed Commissioner Childers so moved with was seconded as appropriate and so Ordered. Commissioner Davidson signed the Order.

The 11:00 a.m. Docket for “traditional” type cases:

- The Commission called 07-MSRC-125 Big Elk Mining Co. Inc., with Haines for OMSL and Marty Cunningham for Big Elk, 07-MSRC-167 Blue Diamond Coal Co. with Haines for OMSL and Marco Rajkovich for Blue Diamond, 07-MSRC-188 Roger Banks with Patrick for OMSL and Mr. Banks appearing on his behalf, 08-MSRC-110 Joe Jacobs & Herbert Moore, with Smock for OMSL and Bill Caylor for the Respondents, and 08-MSRC-111 Wolford, Adkins & Chapman for settlement for Mr. Chapman and Attorney Boyd for OMSL. Each were called in regard to a settlement and OMSL made a motion to enter a **settlement** agreement at this meeting as to each. Commissioner Childers made a motion to **grant**, the OMSL Motion which was seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.
- The Commission called 07-MSRC-143 William Henry Harris. Attorney Haines made a motion to **continue** the consideration of the **settlement agreement** to the October meeting. Commissioner Childers made a motion to **grant** which was seconded as appropriate. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.
- The Commission **heard** the case of 08-MSRC-199 David W. Dennison. Mr. Dennison appeared on his own behalf and OMSL was represented by

Richardson. At the conclusion of the hearing the Commission informed the parties that a decision would be forthcoming within ninety (90) days.

▪ **Petitions for an Order filed by OMSL in roof control cases:**

None were filed for this meeting.

Old Business

Ratification of Final Order:

08-MSRC-122 Fuller, Tackett & Tackett was called and the Final Order as to both the Tackett's was signed and adopted as a Final Order. The General Counsel was instructed to distribute the Order.

□ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday October 9, and the possibility of one traditional type hearing.

□ **Status Report & Abeyances;**

None were filed for this meeting.

□ **Appeals**

- The Commission discussed the appeal to Franklin Circuit Court of the Final Order in **Hobert Hoskins** 05-MSRC-007 now 05-CI-01702 in Division I. The Commission was informed that Judge Sheppard Ordered a **briefing schedule**. Counsel for OMSL is to file a Motion to Dismiss for the reason that the case is moot due to the passage of time exceeding the probationary period ordered with no further violations.
- The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 04-MSRC-002 **Willie "Tick" Sizemore**, et al. and learned that it had been appealed to the **Court of Appeals**.
- The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 05-MSRC-004 **Simon Ratliff**, and was informed that Hon. Barbara Pauley is filing a **briefing schedule**.

- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of 06-MSRC-005 **McCoy & Short**, 07-CI-1981, Division 1. The matter was **briefed** by Hon. Larry Moscoe.
- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 07-MSRC-088 **Jerry J. Maggard**, et al. Hon. Smock, counsel for OMSL stated that they were **briefing** the matter.

New Business

❑ **Office & Administrative;**

- ❑ The General Counsel advised that the **mileage** remains to forty nine (49) cents per mile.
- ❑ The required deep and surface mine visits are being scheduled and facilitated by Commissioner Childers for the full Commission.

❑ **Training**

- **Required Hearing Officer Training:** Newly appointed Commissioner Joe F Childers is scheduling his required 40 hour new miner training and the required training for compliance with the KRS 13B hearing officer statutory requirements.

- ❑ **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the Dennison case and then reconvened.

❑ **Probable Cause Determinations**

None set for this meeting.

❑ **Settlement Agreements**

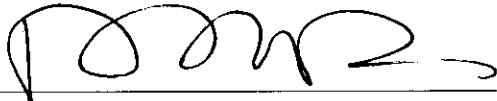
The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

- ❑ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.
- ❑ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday October 9** 2008.

- **Adjournment:** Commissioner Childers made a motion to adjourn, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday October 9, 2008. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:



Chair Denise Moore Davidson
Mine Safety Review Commission

10/9/08
Date